IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 34317 of 2006(I)

PETITIONER:

P.K.GOPALAN,
VAYALIRAKATHU HOUSE, KOODAL P.O.,
PATHANAMTHITTA,
(WORKING AS DEPUTY COLLECTOR,
(ELECTION), KOLLAM).

BY ADV. SRI.P.KURUVILLA JACOB
SRI.KRB.KAIMAL (SR.)

RESPONDENTS:
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1. **STATE OF KERALA,**
   REP. BY THE SECRETARY,
   REVENUE DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE COMMISSIONER FOR LAND REVENUE,**
   THIRUVANANTHAPURAM.

3. **THE DISTRICT COLLECTOR,**
   KOLLAM.

BY GOVERNMENT PLEADER SRI.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

W.P.C. NO.34317/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE RELEVANT PORTION OF SENIORITY LIST. DT. 21.10.97.

EXT.P2:- COPY OF THE SUSPENSION ORDER ISSUED BY THE 1ST RESPONDENT DT. 19.6.98.

EXT.P3:- COPY OF THE MEMO OF CHARGES DT. 29.9.98.

EXT.P3(A):- COPY OF THE STATEMENT OF ALLEGATION.

EXT.P4:- COPY OF THE WRITTEN STATEMENT OF DEFENCE SENT TO THE 1ST RESPONDENT BY THE PETITIONERDT. 9.12.98.

EXT.P5:- COPY OF THE ORDEROF THE 1ST RESPONDENT DT. 15.10.99.

EXT.P6:- COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DT. 28.2.2000.

EXT.P7:- COPY OF THE REVIEW PETITION FILED BY THE PETITIONER BEFORE THE HONOURABLE MINISTER FIR REVENUE DT. 3.1.05.

EXT.P8:- COPY OF THE REPORT OF THE 2ND RESPONDENT DT. 14.11.05.

EXT.P9:- COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DT. 11.7.06.

EXT.P10:- COPY OF THE LETTER OF THE 2ND RESPONDENT DT. 4.10.06.

EXT.P11:- COPY OF THE GO(RT) NO. 695/07/GAD DT. 25.1.07.

EXT.P12:- COPY OF THE NOTIFICATION ISSUED BY GOVERNMENT OF INDIA DT. 28.2.07.

EXT.P13:- COPY OF THE GOVERNMENT ORDER DT. 12.3.07.

/TRUE COPY/

P.S. TO JUDGE

tss

V.GIRI, J.

W.P.(C).No.34317 of 2006 I

Dated this the 25th day of September, 2007.

JUDGMENT

The petitioner is working as a Deputy Collector. He is due to retire on 31.10.2007. Disciplinary proceedings were initiated against the petitioner for alleged unauthorised absence from duty as also for accumulation of files in his office without attending to his duties. Ext.P5 order came to be passed by the Government on 15.10.1999. The Government found that "from the reports of the District Collector, it seems that there was some negligence and dereliction of duty on the part of the petitioner. Being a responsible officer, he should have attended office regularly and submitted tour programme and leave application in time". The Government further stated in Ext.P5 that "for the irregularities and dereliction of duty on the part of the delinquent, he deserves major punishment. However, taking a lenient view Government are pleased to order

that his next increment be barred for one year without cumulative effect. Government are also pleased to revoke his suspension and to reinstate him in service forthwith".

2. Thus, a minor punishment of barring of one increment for one year without cumulative effect came to be passed. Separate orders were issued regularising the period of suspension.

3. Petitioner sought review of Ext.P5. The review was entertained by the Government and Ext.P9 order was passed.

> **"Government have examined the matter in detail with reference to the connected records and in consultation with the Commissioner, Land Revenue. The review petitioner was heard by the Deputy Secretary to Government. Government find no compelling reason to review the earlier order as dereliction of duty which was the ground on which disciplinary action was initiated against him is not expected of a Senior Government Official of his rank. Therefore,**

> **the Review Petition is rejected and Government order accordingly. Further the Government order that the Commissioner, Land Revenue will sanction the leave applied for by the review petitioner."**

4. In the meanwhile, the petitioner was not considered for empanellment in the list drawn up under the Indian Administrative Service (appointment by promotion) Regulations, 1955 {**for short "the Regulations**"}. The reason given in this behalf is that the confidential reports of the petitioner were not made available and therefore, the petitioner's case was not placed before the committee constituted under the Regulations. In these circumstances, the writ petition is filed challenging Exts.P5 and P9 and also seeking appropriate directions to see that the petitioner's name is considered by the Committee constituted under the Regulations.

5. A counter affidavit has been filed on behalf of the respondents, essentially contending that the

confidential reports of the petitioner were not available. There also seems to be an allegation that the petitioner is somewhat responsible for not making the confidential reports available, so as to enable the Government to place it before the Committee functioning under the Regulations.

6. I heard learned counsel senior counsel for the petitioner Mr.K.R.B.Kaimal and Mr.Nandakumar, Senior Government Pleader on behalf of the respondents.

7. Mr.Kaimal contended that Ext.P9 order passed in the review petition, is bad for the reason that the Government itself thought it appropriate to treat the period of absence of the petitioner as eligible leave and consequently ordered the punishment of barring of one increment without cumulative effect. The contention is that if the period of absence is considered and treated as eligible leave, the second charge levelled against the

petitioner that he has been responsible for accumulation of files in the office have also to be reviewed simultaneously. It is further contended, de hors Ext.P9, the name of the petitioner ought to have been paced for consideration before the Committee constituted under the Regulations. Reference in this regard is made to Exts.P11, P12 and P13, which will show that juniors to the petitioner were considered by the committee and were included in the select list. Ultimately, they came to be appointed also.

8. Mr.Nandakumar contended that insofar as Ext.P9 is concerned, the last portion of Ext.P9, by which the Government directed the period of absence of the petitioner to be treated as eligible leave, is essentially a concession shown by the Government and it cannot, therefore, be treated as a reason for further requiring the Government to review the order of punishment under Ext.P4.

9. Insofar as Ext.P9 is concerned, I am of the view that sufficient reasons have been given by the Government to affirm the punishment imposed under Ext.P5. After all, a reading of Ext.P5 will show that the Government came to the conclusion that the charges levelled against the petitioner had been proved, but then went on to impose only a minor punishment. Even in Ext.P5 the Government reserved unto itself the power to pass separate orders with regard to the manner in which the period of absence is to be treated. The petitioner is the beneficiary of the order by which the period of absence is directed to be treated as eligible leave. The said conclusion cannot be stated to be incorrect. At any rate, it cannot be treated as an illegality or an error of jurisdiction vitiating Ext.P9.

10. Regarding the second contention of the petitioner that his name should have been placed before the committee constituted under the Regulations, I am

of the view that the petitioner is entitled to succeed on this aspect. The disciplinary proceedings, which were pending against the petitioner, ended on 15.10.1999, the date of Ext.P5. The petitioner's confidential reports should have been prepared by the appointing authority or by the Departmental Head and at the appropriate time the petitioner's name should have been placed before the committee and his case should have been considered by it. Exts.P11 to P13 would show that juniors to the petitioner have been promoted. Of course, empanellment in the select list and consequential appointment is to be decided by the committee. Insofar as the Government is concerned, the confidential reports of the petitioner should have been collected and placed before the committee constituted under the Regulations. This has not been done. Pendency of a review petition or of this writ petition should not have been treated as a reason for not placing the petitioner's

name for consideration by the committee constituted under the Regulations.

In the circumstances, the writ petition is disposed of directing the first respondent to take appropriate action to consolidate the confidential reports of the petitioner and place the petitioner's name along with the confidential reports before the next committee constituted under the Regulations.

Sd/-

(V.GIRI)

JUDGE

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